

**FILED**

**FEB 22 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ROBERT L. MINTEER,

Petitioner - Appellant,

v.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent - Appellee.

No. 05-74551

Tax Ct. No. 7452-04

MEMORANDUM<sup>\*</sup>

Appeal from a Decision of the  
United States Tax Court

Submitted February 13, 2006<sup>\*\*</sup>

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Robert L. Minter appeals pro se from the Tax Court's summary judgment in favor of the Commissioner of Internal Revenue ("CIR") in his action contesting tax deficiencies for the year 2001. We have jurisdiction pursuant to 26 U.S.C.

---

<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 7482. We review de novo, *see Talley Indus. Inc. v. Comm’r*, 116 F.3d 382, 385 (9th Cir. 1997), and we affirm.

The Tax Court properly granted summary judgment for the CIR because Minter’s receipt of \$7,156 from his retirement fund was taxable income as he used it to purchase gold coins which are in his possession, rather than rolling it over into another retirement plan. *See* 26 U.S.C. § 408(d)(1) and (3). The Tax Court also properly assessed a ten percent addition because Minter was not yet 59 ½ years of age when the distribution was made. *See* 26 U.S.C. § 72(t)(2).

We reject Minter’s contention that the IRS should have allowed him to withdraw his petition and thereby end the collection action against him. *See* 26 U.S.C. §§ 6214(a) (“the Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency”), 6213(a) (providing the Tax Court with jurisdiction over a timely filed petition).

We also reject Minter’s contention that the IRS violates Equal Protection by giving tax-deferred status to some retirement plans and not others.

**AFFIRMED**